

***BROKERING CONTROL***  
***from the view-point of an***  
***EU Member country***

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## ***Legal framework of brokering control within the EU***

- Article 133 of the EC- Treaty
- Article 296 of the EC- Treaty

# *Part 1*

## *Brokering of military goods*

## ***Common Position on brokering2003/468/CFSP aims:***

1. Stop illicit trafficking of fire arms
2. Foster UN-program on small arms and light weapons
3. Foster the ongoing discussions in different international fora
4. Harmonisation of legislation of EU- Member states
5. Information sharing among Member States

## ***Common Position on brokering basic elements***

1. All 27 Member States shall take actions to control brokering
2. Definition of brokering
3. Member States may also request brokers to register
4. Assessment criteria same as Code of Conduct

## *Control of brokering in Austria*

1. Since 1992 brokering on military goods is controlled by introducing respective legislation in the Austrian FTA.
2. With amendment to the War Material Act (WMA) of 2001 brokering control was introduced for war weapons as well

However unclear definitions for brokering and no definitions for the term “broker” in FTA at that time

## *Control of brokering in Austria*

**On 1. October 2005 a completely new  
Foreign Trade Act (FTA) entered into  
force.**

Existing brokering – legislation was  
amended to be in compliance with the  
Common Position 2003/468/CFSP

## *Definition of brokering:*

1. Negotiating or arranging transactions that may involve items of the military list from a third country to another third country
2. Buys sells or arranges the transfer of items in its ownership from a third country to another third country

## *Who is a broker?*

1. If broker is Austrian citizen **and** resident in Austria **or**
2. If broker is **resident** in Austria **or**
3. If broker **acts from Austrian territory**

*Part 2*

*Brokering Control of Dual  
Use Goods*

## *Why was a recast of the current Dual Use regulation necessary?*

- Increased security interests of the EU
- Transparent regulations for the EU exporters
- Enhanced fight against the proliferation of WMD
- UN Resolution 1540 calls for controls on Transit and brokering

## *New EU Dual Use Regulation 428/2009 of 5.May 2009*

1. Will enter into force end of August 2009
2. Expands existing export controls to controls on transit and **brokering**

## *basic elements on Dual Use brokering legislation*

1. Definition on brokering including exemptions
2. Definition on broker
3. Information and documentation requirements for brokers
4. Allows EU member States to impose stricter measures

## *Definition of brokering of Dual Use goods*

1. Negotiation or arrangement of transactions for the purchase sale or supply of dual use goods from a third country to another third country
2. Selling or buying of dual use goods located in a third country for the transfer to another third country

## *Exemptions from the brokering definition*

1. For the purpose of this Regulation the sole provision of ancillary is excluded from the brokering definition.
2. Ancillary services are transportation, financial services, insurances or re-insurance, or general advertising or promotion

## *Definition of broker of Dual Use goods*

Any natural Person or partnership, resident or established in a Member State that carries out services defined as brokering

## License requirement for brokering of Dual Use goods

1. Goods must be listed in Annex 1 **and**
2. the broker has been informed by the authority that the goods are or may be intended for WMD **or**
3. If a broker is aware that listed dual use goods are intended for WMD he must notify the competent authority

## *stricter national legislation possible:*

1. Member States may extend the above mentioned legislation to non listed items or to goods for military end use
2. Member States may adopt or maintain national legislation for license requirement if the broker has “ground for suspecting” instead of “is aware”

## ***Sanctions for brokering without a license:***

1. Up to 2 years imprisonment for brokering without a license
2. Up to five years if goods brokered contribute to the production of WMD or their delivery systems
3. According to Article 177a of the "Austrian Penal Code" *up to life sentence if a person contributes to the production of WMD*

## *Difficulties in controlling brokering*

1. How to identify brokers?
2. No customs control on your territory
3. Sometimes no money transfer on your territory

## *Possible solutions to controlling brokering:*

1. Register of brokers
2. Intelligence information and information sharing
3. Regular audit of books of registered brokers

## *How to implement brokering controls in your country?*

1. Implement a proper legislation
2. Define the terms “broker” and “brokering”
3. Consider the implementation of a register
4. Provide a system of sanctions for non-compliance
5. Introduce a system for licensing and enforcement
6. Introduce information sharing and awareness raising programs with the industry
7. Information sharing with other ministries and organisations

*Thank you for your attention*

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